

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

GUARDIAN ON BEHALF OF STUDENT,

v.

LOS ANGELES UNIFIED SCHOOL
DISTRICT, CALIFORNIA DEPARTMENT
OF EDUCATION, CALIFORNIA
HEALTH AND HUMAN SERVICES,
CALIFORNIA DEPARTMENT OF
MENTAL HEALTH, AND LOS ANGELES
COUNTY DEPARTMENT OF MENTAL
HEALTH.

OAH CASE NO. 2010110312

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT

On November 8, 2010, Student filed a Due Process Hearing Request¹ (complaint) against the Los Angeles Unified School District (LAUSD), California Department of Education (CDE), California Health and Human Services (CHHS), California Department of Mental Health (CDMH), and Los Angeles County Department of Mental Health (LACDMH). On November 19, 2010, LAUSD filed a Notice of Insufficiency (NOI) as to Student's complaint.

APPLICABLE LAW

The named parties to a due process hearing request have the right to challenge the sufficiency of the complaint.² The party filing the complaint is not entitled to a hearing unless the complaint meets the requirements of title 20 United States Code section 1415(b)(7)(A).

A complaint is sufficient if it contains: (1) a description of the nature of the problem of the child relating to the proposed initiation or change concerning the identification, evaluation, or educational placement of the child, or the provision of a free appropriate

¹ A request for a due process hearing under Education Code section 56502 is the due process complaint notice required under title 20 United States Code section 1415(b)(7)(A).

² 20 U.S.C. § 1415(b) & (c).

public education (FAPE) to the child; (2) facts relating to the problem; and (3) a proposed resolution of the problem to the extent known and available to the party at the time.³ These requirements prevent vague and confusing complaints, and promote fairness by providing the named parties with sufficient information to know how to prepare for the hearing and how to participate in resolution sessions and mediation.⁴

The complaint provides enough information when it provides “an awareness and understanding of the issues forming the basis of the complaint.”⁵ The pleading requirements should be liberally construed in light of the broad remedial purposes of the IDEA and the relative informality of the due process hearings it authorizes.⁶ Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge.⁷

DISCUSSION

Student’s complaint raises two issues for determination regarding the opposing parties’ respective duties to ensure that a mental health assessment is conducted pursuant to LAUSD’s October 2010 assessment referral to LACDMH. LAUSD asserts that Student’s claims are not ripe for adjudication because LACDMH still has time to complete its assessment pursuant to California Code of Regulations, title 2, section 60045, subdivision (e), because the 50 day timeline has not expired. Additionally, LAUSD asserts that the Office of Administrative Hearings (OAH) does not have jurisdiction to hear Student’s claim that the opposing parties violated various federal and state statutes, such as Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq.) (Section 504), the Americans with Disabilities Act (ADA) (42 U.S.C. § 12101, et seq.), and the Unruh Civil Rights Act (Unruh Act) (Civ. Code, § 51 et seq.).

³ 20 U.S.C. § 1415(b)(7)(A)(ii)(III) & (IV).

⁴ See, H.R.Rep. No. 108-77, 1st Sess. (2003), p. 115; Sen. Rep. No. 108-185, 1st Sess. (2003), pp. 34-35.

⁵ Sen. Rep. No. 108-185, *supra*, at p. 34.

⁶ *Alexandra R. v. Brookline School Dist.* (D.N.H., Sept. 10, 2009, No. 06-cv-0215-JL) 2009 WL 2957991 at p.3 [nonpub. opn.]; *Escambia County Board of Educ. v. Benton* (S.D.Ala. 2005) 406 F. Supp.2d 1248, 1259-1260; *Sammons v. Polk County School Bd.* (M.D. Fla., Oct. 28, 2005, No. 8:04CV2657T24EAJ) 2005 WL 2850076 at p. 3 [nonpub. opn.] ; but cf. *M.S.-G. v. Lenape Regional High School Dist.* (3d Cir. 2009) 306 Fed.Appx. 772, at p. 3 [nonpub. opn.].

⁷ Assistance to States for the Education of Children with Disabilities and Preschool Grants for Children with Disabilities, 71 Fed.Reg. 46540-46541, 46699 (Aug. 14, 2006).

Student's complaint provides a sufficient factual basis regarding his deficits, his need for a mental health assessment to determine mental health services, goals and possible residential placement. While Student's claims might not be ripe for adjudication, or outside the scope of OAH's jurisdiction, LAUSD's contentions are not appropriate for a NOI, which just looks at the face of the complaint to determine its sufficiency. LAUSD's contentions should be made through a Motion to Dismiss.

Regarding the proposed resolutions, while some may be outside of OAH's jurisdiction because Student seeks relief that impacts all similarly situated students and enforcement of a District Court order, the complaint does contain proposed resolutions limited to Student, such as compensatory education based on the opposing parties' failure to assess him. Accordingly, Student's complaint is legally sufficient.

ORDER

1. The complaint is sufficient under title 20 United States Code section 1415(b)(7)(A)(ii).
2. All mediation, prehearing conference, and hearing dates in this matter are confirmed.

Dated: November 23, 2010

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings